Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 86-508

SUPREME COURT OF THE

UNITED STATES

MAXINE L. MASTROPIETRO, PETITIONER

V.

ROBERT ALAN MASTROPIETRO, RESPONDENT

ON WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

OPPOSING BRIEF ~~AND APPENDIX~~ OF RESPONDENT IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

See Statement of Facts

(Ra 4-5).

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SUMMARY OF ARGUMENT

This case involves nothing more or less than the unspectacular and rather common attempts to modify a judgment of divorce as changed circumstances occur. Although Petitioner succeeded in defeating a good deal of the relief sought by the Respondent in the State Court, Petitioner now attempts to utilize Constitutional arguments to receive total relief. Respondent contends that the State Court in granting the limited relief to Respondent did not violate any of Petitioner's constitutional rights. It is Respondent's contention that Petitioner is attempting to minimize the function of Respondent as the custodial parent. Therefore, it is Respondent's contention that the grounds for granting a Writ of Certiorari

are not present as there is no subsequential federal question.

ARGUMENT

Respondent has reviewed the criteria for the granting of relief of the Writ of Certiorari set forth in the Supreme Court Rule 17. Respondent is unable to find any substantial or important reasons where the State Court has violated Peitioner's rights. The type of suggested cases whereupon the Court may act in its decision does not appear to be present. Nowhere in Petitioner's brief is there a suggestion that the State Court has decided a federal question in conflict with the decision of another state nor that the State Court has decided an important question of federal law, which has not been, but should be settled by this Court.

Petitioner complains about the procedure in the State Court. It should be pointed out, that the State Courts, bent over backwards to be fair to Petitioner. Petitioner did not file a notice of appeal to the original modification order but only in connection with the subsequent corrective order. This was duly noted in the Appellate Division of New Jersey decision (Pa 98) by way of footnote.

Petitioner also argues a violation of constitutional rights connected with property or parental rights. As to the former, Petitioner is in error, as the property in question is owned by the Respondent. In the deed of conveyance from Petitioner to Respondent, Petitioner inserted references to the restrictive provisions contained in the judgment of

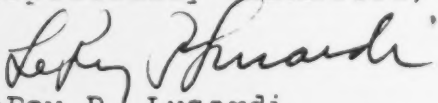
divorce. Respondent contends that this does not violate any property rights of Petitioner. Likewise, Respondent is the custodial parent and has to face the day-to-day problems in raising children. Petitioner seeks to restrict Respondent's exercise of that obligation. For, in fact, parenthood seems to deal more with obligations than rights.

CONCLUSION

Wherefore, Respondent respectfully requests that the Court deny Petitioner's request for the review of Writ of Certiorari.

Dated: October 23, 1986

Respectfully submitted,



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